IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4174 of 2006
With
FIRST APPEAL No. 4175 of 2006
To
FIRST APPEAL No. 4182 of 2006
With
FIRST APPEAL No. 4184 of 2006
To
FIRST APPEAL No. 4188 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 1 - Appellant(s)
Versus
PATEL JAGDISHBHAI AMBALAL & 1 - Defendant(s)

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Appearance :

MR SATYAM CHHAYA, AGP for Appellant(s) : 1 – 2. IN FA NOS.4174/2006 TO 4180 OF 2006

MR.SUNIT S SHAH, GP for Appellant(s): 1-2 IN FA NOS.4181/2006 AND 4182/2006 WITH 4184/2006 TO 4188/2006

MR AJ PATEL for Defendant(s) : 1,
RULE SERVED for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 17/04/2007

ORAL JUDGMENT

1. The present appeals arise against the judgement and award passed by the Reference Court dated 31.12.2004 in Land Reference Cases No.1938 of 1997 to 1946 of 1997 with 1948 of 1997 to 1952 of 1997, whereby the Reference Court has additionally awarded the compensation at the rate of Rs.2,283/- per are (Rs.22.83 per sq. mtrs.) for the land under acquisition together with the increase at the rate of 12% per annum and solatium at the rate of 30% with interest at the rate of 9% for the first year and 15% for the subsequent year.
2. Heard Mr.Chhaya, learned AGP for the appellant State and Mr.Jayesh M. Patel with Mr.A.J.Patel, learned Counsel for the original claimants.
3. Mr.Jayesh Patel has stated that he has received instructions to appear on behalf of the original claimants, however, the vakalatnama shall be filed by him of the remaining claimants within a period of two weeks from today.

4. The short facts of the case appears to be that for the acquisition of the land of the village Gajera, the proposal was moved. The notification under Section 4 of the Land Acquisition Act (hereinafter referred to as “the Act”) was published on 27.3.1996 and ultimately the awards were passed on 27.3.1997 and the Land Acquisition Officer awarded the compensation at the rate of Rs.304 per are for non-irrigated and Rs.456/- per are for irrigated land. As the land owner/claimants were not satisfied with the compensation, the demand was raised for more compensation, which came to be referred to the Reference Court for adjudication. The Reference Court ultimately held that the claimants are entitled to get compensation at the rate of Rs,2,283/- (Rs.22.83 per sq. mtrs.) as the compensation and the amount of compensation awarded by the Special LAO was ordered to be deducted. The Reference Court also awarded the other additional statutory benefit of interest at the rate of 12% per annum from the date of publication of the notification under Section 4

of the Act until the award and solatium at the rate of 30% and the interest at the rate of 9% per annum for the first year from the date of taking over and the interest at the rate of 15% per annum for the subsequent year. It is under these circumstances, the present appeals before this Court.

5. It appears that there is no dispute on the point that for the land situated at Village Gajera by the very notification under Section 4 of the Act dated 27.3.1996, Land Reference Cases were filed and decided by the Reference Court being No.1979 of 1997 to 1993 of 1997 and the Reference Court had rendered the judgement and award dated 31.12.2004 by fixing the compensation at the rate of Rs.22.83 per sq. mtrs. with the solatium and the interest. There is also no dispute on the point that against the said judgement and award of the Reference Court, First Appeals No.1948 of 2007 and allied matters were preferred by the State before this Court, which came to be decided on 29.3.2007 and this Court has concluded that the claimants were entitled

to the compensation at the rate of Rs.16/- per sq. mtrs., and other benefits as ordered by the Reference Court.

6. It deserves to be recorded that this Court in its decision dated 29.3.2007 had recorded at para 5 for the consensus of the original claimants to accept the amount of Rs.16/- per sq. mtrs as compensation, since the issue was covered by the decision of the Division Bench of this Court. Similar is the situation in the present case so far as the declaration made by the learned Counsel for the original claimants, is concerned.

7. It may also be recorded that this Court in the above referred decision, inter alia, observed at para 7, 8, and 9 as under:-

> “7. It is undisputed that the land under acquisition is situated in the village Gajera. Further, for the acquisition of the land in question, Notification was issued in the year 1996. Therefore, if 10% rise in the price by way of appreciation is considered from the year 1994 on the basis of Rs.15/- per sq. mtrs., it may be more

than Rs.16/- per sq. mtrs. However, as the original claimants have restricted their claim to Rs.16/- per sq. mtrs., I find that such an amount of Rs.16/- per sq. mtrs., would rather be in the interest of the appellant State, since the surplus of Re.1 per sq. mtrs., which is less than 10% rise per year.

8. It may be recorded that for supporting the reduction of the price by this Court in the land acquisition proceedings arising for the very village Gajera in respect of which the notification was published in the year 1994, the Division Bench in the above referred decision, inter alia, observed at para 8 as under:-

> “8. From the record of the case it is evident that the claimants never claimed enhanced compensation either on the basis of yield or on the basis of comparable sale instances. What was relied upon by the claimants was previous award of the Reference Court relating to the lands of village Uchhad. As observed earlier, the

assertion made by the witness for the claimants that the lands of village Uchhad were similar to the lands acquired in the instant case has almost gone unchallenged. The fact that the boundaries of two villages are adjoining to each other is not in dispute. It is well settled that previous award of the Reference Court relating to a village which has attained finality can be considered to be a good piece of evidence for the purpose of determining market value of similar lands acquired subsequently from the adjoining village. Therefore, this Court is of the opinion that no error was committed by the Reference Court in placing reliance on the previous award of the Reference Court for the purpose of determining market value of the lands acquired in the instant case. On re-appreciation of evidence adduced before the Reference Court, this Court is of the opinion that the finding recorded by the

Reference Court that the claimants were entitled to enhanced compensation on the basis of previous award of the Reference Court relating to the lands of village Uchhad cannot be interfered with and deserves to be upheld. However, it is agreed by the learned counsel for the claimants that the claimants would be entitled to reasonable rise in price of lands at the rate of Rs.0.71 Ps.per sq.mt. for 11 years and if calculation is made on this basis, the claimants in all would be entitled to Rs.14.91 Ps. per sq.mt., which is rounded off to Rs.15/- per sq.mt. for the purpose of convenience and not at the rate of Rs.20/- per sq.mt. as calculated by the Reference Court. Thus, the finding recorded by the Reference Court that the claimants are entitled to compensation at the rate of Rs.20/- per sq.mt. in all will have to be modified by holding that the claimants would be entitled to compensation at the rate of Rs.15/- per

sq.mt.”

9. In view of the reasons recorded hereinabove, if the circumstances of notification as published in the year 1994 under Section 4 of the Act and the notification as published under Section 4 of the Act in the present case in the year 1996 are considered, it appears that the claimants would be entitled to the compensation at the rate of Rs.16/- per sq. mtrs. as against Rs.22.83 per sq. mtrs., fixed by the Reference Court.”

8. As the lands under acquisition in the present case are also situated in the same village and they are rather covered by the very notification under Section 4 of the Act of the same date, similar view deserves to be taken in the present appeals.

9. Hence, all the appeals are partly allowed. The common judgement and award of the Reference Court, which is impugned in the present proceedings for Land Reference Cases No.1938/1997 to 1946/1997 and 1948/1997 to 1952/1997 awarding in all compensation to the claimants of Rs.22.83 per sq. mtrs. for the

acquired lands shall stand modified and it is hereby held that all concerned claimants shall be entitled to the compensation of Rs.16/- per sq. mtrs. The other benefits granted to the claimants by the impugned award are not interfered with, but shall get proportionately reduced. No other as to costs. Decree accordingly.

17.4.2007 **(Jayant Patel, J.)**

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